

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

TRACY N. LOMAX,

CV. 04-1604-MA

Petitioner,

ORDER

v.

CHARLES DANIELS,

Respondent.

MARSH, Judge

Petitioner brought this proceeding pursuant to 28 U.S.C. § 2241. On May 26, 2005, I dismissed his habeas petition for lack of jurisdiction on the basis that petitioner sought to challenge the legality of his sentence (imposed by the U.S. District Court for the District of Nebraska) and that he had failed to demonstrate that a motion under 28 U.S.C. § 2255 was inadequate or ineffective to do so.

On July 15, 2005, I issued an order denying a certificate of appealability. Petitioner has filed a "Notice of Objection to Denial of C.O.A. for Lack of Jurisdiction" wherein he moves the court to strike the order denying the certificate of appealability.

Petitioner argues that 28 U.S.C. § 2253(c)(1) does not require a certificate in a § 2241 proceeding.

Petitioner's motion is denied. A certificate of appealability is necessary in a § 2241 proceeding if the petitioner seeks to challenge the legality of his conviction or sentence. Porter v. Adams, 244 F.3d 1006 (9th Cir. 2001).

**CONCLUSION**

Petitioner's Notice of Objection (and motion to strike the certificate of appealability) (#12) is DENIED.

IT IS SO ORDERED.

DATED this \_26\_ day of August, 2005.

\_ /s/ Malcolm F. Marsh\_\_\_\_\_  
Malcolm F. Marsh  
United States District Judge